

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RODNEY WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

February 28, 2003

No. 232827

Wayne Circuit Court

LC No. 00-004026

Before: Cooper, P.J. and Hoekstra and Markey, JJ

PER CURIAM

Defendant appeals by right his convictions following a jury trial for felony murder, in violation of MCL 750.316, and possession of a firearm during the commission of a felony, in violation of MCL 750.227b. Defendant was also convicted of armed robbery, in violation of MCL 750.529, but the trial court vacated this conviction on double jeopardy grounds. We reverse and remand.

The first issue defendant raises is whether the trial court properly granted his request to proceed in propria persona. A criminal defendant's right to represent himself is implicitly guaranteed by the United States Constitution, US Const, Am VI, and explicitly guaranteed by the Michigan Constitution and statute, Const 1963, art 1, § 13, MCL 763.1. *Martinez v California Court of Appeal*, 528 US 152, 154; 120 S Ct 684; 145 L Ed 2d 597 (2000); *People v Adkins, (After Remand)* 452 Mich 702, 720; 551 NW2d 108 (1996); *People v Kevorkian*, 248 Mich App 373, 417; 639 NW2d 291 (2001). The right is not absolute, however; the requirements that must be met before a defendant may proceed in propria persona are set forth in *People v Anderson*, 398 Mich 361, 367-368; 247 NW2d 857 (1976).

In the middle of the trial, defendant decided that he was dissatisfied with the conduct of his counsel and asked permission to proceed in propria persona. In response, the trial judge conducted a hearing outside the presence of the jury, read aloud the disclosures mandated by MCR 6.005(D)(1), and emphasized to defendant the risks he was taking in following this course, suggesting to him that it was imprudent to do so. However, the trial judge conducted the hearing in a hurried fashion, pressuring defendant to make a decision quickly and telling him that he needed to immediately state what he wanted to do because the judge was about to bring the jury back into the courtroom. After the prosecutor suggested that a page from the transcript of the preliminary examination would allay defendant's principal concern that his attorney's performance was deficient, which had to do with his supposed failure to impeach a witness

properly, defendant asked the judge for an opportunity to review the page before making a final decision about whether to proceed in propria persona or continue being represented by counsel. The judge refused to allow him to do so, in spite of defendant's repeated and impassioned pleas, in the course of which he asked the judge what the relative importance was of an extra minute being taken in the proceedings compared with the risk of his spending the rest of his life in prison were he wrongly convicted. Because defendant was not permitted to read this page before making this decision, because the trial transcript makes evident that it was a key factor to him in the decisional process and that he had grave concerns about making a decision without verifying the prosecutor's statement from the pretrial examination transcript, and because the preliminary examination transcript indicates that a review of it might well have allayed defendant's concerns about his attorney, we find that defendant's waiver of his right to counsel was not unequivocal, fully knowing, intelligent and voluntary, as required by *Anderson, supra*. Accordingly, we find that defendant's request was denied without due deliberation and without affording him the opportunity to be properly informed before making his decision. Moreover, his request could have been accommodated with minimal inconvenience to the court and only slight delay in the proceedings. Such a cursory handling of defendant's request violated defendant's right to have the proceeding conducted so as to ensure "that he knows what he is doing and his choice is made with eyes open." *Id.* at 368. On this basis, we reverse defendant's convictions and remand for a new trial.

Defendant also argues that he was denied a speedy trial. Specifically, defendant claims that his convictions should be reversed because he was not brought to trial until about nine months after his arrest. This issue lacks merit. We review denovo a speedy trial claim. *People v Mackle*, 241 Mich App 583, 602; 617 NW2d 339 (2000). "In determining whether a defendant has been denied a speedy trial, four factors must be balanced: (1) the length of the delay; (2) the reasons for the delay; (3) whether the defendant asserted his right to a speedy trial; and (4) prejudice to the defendant from the delay." *Id.*, quoting *People v Levandoski*, 237 Mich App 612, 620 n 4; 603 NW2d 831 (1999). The burden is on the defendant to show prejudice when the length of the delay is less than eighteen months. *People v Cain*, 238 Mich App 95, 112; 605 NW2d 28 (1999). After reviewing the above factors, the lower court record in this matter, and defendant's allegation that he suffered anxiety while awaiting trial, we conclude that defendant has not met his burden of showing prejudice from a delay of relatively short duration. *Id.* at 112-113. Reversal of defendant's convictions is not warranted on speedy trial grounds.

Defendant also argues other assignments of error on appeal. Because we reverse on the basis of defendant's first issue discussed *supra*, it is unnecessary for us to address defendant's other arguments.

We reversed and remand. We do not retain jurisdiction.

/s/ Jessica R. Cooper

/s/ Jane E. Markey